

78-1171

Supreme Court, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

HUBERT SINGLETON

Petitioner,

against

STATE OF CONNECTICUT

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF CONNECTICUT**

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October 10, 1978

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The petitioner Hubert Singleton respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court, State of Connecticut entered in this proceeding on December 27, 1977.

Opinion Below

The Supreme Court of the State of Connecticut affirmed a decision of the Superior Court and denied a motion to reargue petitioner's appeal.

Jurisdiction

This Court's jurisdiction is invoked under 28 U.S.C. 1257 (3).

QUESTIONS PRESENTED

1. Whether petitioner was denied his rights under the Fourth and Fourteenth Amendments when a sample of blood taken by a doctor from the petitioner while lying on a stretcher in the emergency room of a hospital, under circumstances where the petitioner was seriously injured, as a result of a fatal automobile accident, but was not under arrest or suspected of being under the influence of alcohol and where the request was made by hospital personnel who were treating him for his injuries, the results of which subsequently became the basis of an arrest.
2. Whether the petitioner knowingly, intelligently and voluntarily waived his Fourth and Fourteenth Amendment rights by consenting to give a sample of his blood without any knowledge that the results of same would be used to institute criminal charges against him.
3. Whether the Fifth Amendment right against self-incrimination applies to persons not under arrest or suspected of having committed a crime when the evidence so obtained becomes the primary basis for an arrest without the defendant's knowledge of the incriminatory application of the results of such evidence.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV, Sec. 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of the Case

The petitioner was convicted in the Connecticut Superior Court for Hartford County on the charge of misconduct with a motor vehicle in violation of Sec. 53a-57 of the General Statutes State of Connecticut (see Appendix E). The charges grew out of a two car head on collision on Middle Street in the Town of Bristol in which the operator of the other auto was killed instantly.

The petitioner was found by police officers slumped over the wheel of this 1969 automobile with severe lacerations over his lip and nose, and although seriously injured, appeared to be conscious. He was removed from his auto and rushed via police car to Bristol Hospital.

At the hospital, and while lying on a stretcher, a sample of his blood was taken by Dr. Mirabelli, Coroner for Hartford County who testified that he asked the petitioner for permission to take his blood and the response was "affirmative." He further stated that he did not advise the petitioner of his rights nor that the evidence of the blood test might be used against him in future criminal proceedings. In addition, the nurse in charge and the police officer at the hospital both testified that neither they, nor anyone else advised the petitioner of his right to remain silent or to refuse to give the blood sample, nor what might be the consequences of his consent.

At the time the blood sample was taken, the petitioner was not under arrest, and at the trial, the Court found as a matter of fact that there was no evidence to suspect that the petitioner was under the influence of alcohol prior to and up until the time the alleged consent was given and the blood sample taken. (see appendix B)

Although the petitioner presented several witnesses in his behalf, mostly family members, who testified he was in no condition to give his consent freely, voluntarily and with full knowledge

of his actions as required by the cases, the Court found that the petitioner did in fact give his consent and denied the petitioner's motion to suppress thereby allowing into evidence the results of the blood test sampling.

The blood sample taken by Dr. Mirabelli was placed in a vial and sent to the State Toxicology Laboratory where chemical analysis revealed a .18% alcohol content. The legal limit for alcoholic content in the blood at the time of the accident in the State of Connecticut was .15%. At the time of the taking of the blood sample, the appellant was suffering from the full trauma of a serious accident as supported by the medical records entered into the record at the trial. The injuries included, amongst other things, a severe laceration over his lip and nose requiring numerous stitches in three layers to close, a fractured nose, dislocated hip, requiring the petitioner to be placed in traction, contusions of the liver and other internal injuries.

About forty-five minutes after the blood sample was taken, a nurse obtained a signature on a consent form (see appendix C), which according to her was signed by the petitioner on a clip board that she held upside down for him while he lay on his back on the stretcher.

The blood test results were returned to the Bristol Police Department 36 days after the accident, some 12 days after the petitioner was discharged from the hospital. The petitioner was arrested 39 days later on a warrant in the 17th Circuit Court. A bench warrant from the Superior Court was issued approximately six months later. The facts are undisputed that the blood test results were the primary basis for the issuance of the arrest warrant.

The petitioner was never given an opportunity to affirm his consent at any time after the evening it was taken, nor was he ever approached or confronted by any police officers until the

time of his arrest about two and one-half months after the accident. His testimony on the motion to suppress was that he remembered nothing from a period just prior to the impact, until he woke up two days later in his hospital room.

An appeal was taken to the Supreme Court of the State of Connecticut claiming that the trial court erred in admitting into evidence the results of the blood test samples, a crucial element of the State's case. The Court affirmed the lower court and subsequently denied the petitioner's motion to reargue.

Argument

Certiorari should be granted because this case turns on issues involving personal protections secured by the U.S. Constitution which:

1. The issues arise under the prohibition against unreasonable searches and seizure contained in the Fourth Amendment.
2. The issues prohibit a person in a criminal case to be a witness against himself in violation of the Fifth Amendment of the U.S. Constitution.
3. The issues involve a denial of due process and equal protection of the laws in violation of the Fourteenth Amendment to the U.S. Constitution.
4. The issues affect every person operating an automobile on the highways in every state in the nation.
5. These issues have never been passed upon by the Supreme Court.

We shall discuss each of these points separately:

1. *The issues arise under the prohibition against unreasonable searches and seizure contained in the Fourth Amendment.*

In view of his mental and physical condition at the time the request was made, the defendant claims that he did not truly voluntarily give his consent to the taking of a sample of his blood by a doctor while lying on a stretcher in the emergency room of Bristol Hospital for the purpose of determining alcohol content to use as a basis for an arrest warrant issued several months later. Such a search of his person was in violation of Fourth Amendment protection against unreasonable searches and seizure.

2. *The issues prohibit a person in a criminal case to be a witness against himself in violation of the Fifth Amendment of the U.S. Constitution.*

The defendant further claims that in that he was not under

arrest or even suspected of being under the influence of alcohol, the use of the results of the blood test results as the primary basis for the issuance of a warrant charging him with criminal violation, compelled him to be a witness against himself in violation of the Fifth Amendment of the U.S. Constitution.

3. *The issues involve a denial of due process and equal protection of the laws in violation of the Fourteenth Amendment to the U.S. Constitution.*

That the failure of the state to comply with the provisions of section 14-227 (a) of the Connecticut General Statutes which establishes the requirements necessary to secure the constitutional rights of an accused in the operation of a motor vehicle while under the influence of alcohol, is a denial of the due process and equal protection clauses of the Fourteenth Amendment to the U.S. Constitution.

4. *The issues affect every person operating an automobile on the highways in every state in the nation.*

The issues raised above clearly affect every person operating an automobile on the highways in every state of the nation.

5. *These issues have never been passed upon by the Supreme Court.*

This Court has not decided the question of whether blood test evidence given voluntarily in the emergency room of a hospital is admissible where the defendant is not under arrest, not suspected of having committed a crime and where that evidence subsequently becomes the primary basis for the issuance of an arrest warrant.

The overwhelming cases where blood test results have been upheld involve either an arrest or suspicion of alcohol or both prior to the taking of the blood test sample or where there is at least other independent evidence of intoxication prior to the taking of the blood.

6. *The Decision Below Was Erroneous In Upholding The Ruling Of The Trial Judge In Finding That The Petitioner Did Give His Consent, "Truly Voluntarily" To The Taking Of A Sample Of His Blood In Which The Laboratory Results Became The Basis For The Issuance Of An Arrest Warrant For Violation Of The Criminal Laws Of The State Of Connecticut.*

A

The Court Should Examine The Entire Record To Determine Question Of Voluntariness

The trial court in denying the petitioner's motion to suppress, found as a matter of fact that the petitioner "truly voluntarily" gave his consent to the taking of the blood sample. The Court in its decision noted that he "bolstered" his decision on the fact that the petitioner had signed his name to a consent form within two hours after the blood was drawn. The conclusion was reached notwithstanding the fact that he was lying on his back, after an hour long suturing and nose setting process, and signed the form upside down on a clip board.

This Court has held that it is the duty of the Court to examine the entire record and determine the ultimate issue of voluntariness. *Davis v. North Carolina*, 384 U.S. 737 (1966); *Haynes v. Washington*, 374 U.S. 503, 515, 516 (1963); *Blackburn v. Alabama*, 316 U.S. 199, 205 (1960); *Ashcraft v. Tennessee*, 322 U.S. 143, 147, 148 (1944).

Voluntariness is to be determined from the totality of the surrounding circumstances. *Schneckloth v. Bustamonte*, 412 U.S. 218 (1942).

The Connecticut Supreme Court in upholding the trial court completely ignored the guidelines in Connecticut on Voluntari-

ness as set down in *State v. Tarcha*, 3 Conn. Cir. 43 in which the Court held that,

"A person accused of drunken driving must give real consent for blood test. He must freely and voluntarily consent, under condition where he is *mentally* and *physically* able to make a choice, and with *full knowledge that the results of the test may be used for or against him.*" (Emphasis added)

The Court in its memorandum of decision ruled that the question of consent was one of fact to be decided by the court and that the evidence amply supported that finding. The Court further suggests that the procedural safeguards set down by the legislature in criminal prosecutions for operating a motor vehicle while under the influence of intoxicating liquor or drugs or both do not apply to a charge of misconduct with a motor vehicle. The identical question of whether a person was operating a motor vehicle while intoxicated is at issue.

The petitioner respectfully suggests that to hold that a person charged with drunken driving *is* entitled to the safeguards as set down in *Tarcha* and as established by the legislature in Sec. 14-227a, of the General Statutes State of Connecticut (see appendix E); but a person charged with misconduct with a motor vehicle *is not* so entitled to these very basic constitutional protections, is a denial of due process and equal protection clauses of the Fourteenth Amendment to the U.S. Constitution.

Moreover, the protections of the Fourth Amendment to the U.S. Constitution extend to all equally, to those justly suspected or accused as well as to the innocent. *Cutlanoite v. U.S.*, 208 2d 264 (1953).

The guarantees of the Fourth Amendment are to be liberally construed to prevent impairment of the protection extended.

In *Schneckloth v. Bustamonte*, supra, this Court discussed quite fully the issue of Voluntariness and established the test that if the

confession is the product of an essentially free and unconstrained choice by its maker, then he has willed to confess and it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process. *Culombe v. Connecticut*, 367 U.S. 568, 604-605.

In determining the question of whether a defendant's will was overborne, the Court must determine the factual circumstances surrounding a confession, assess the psychological impact on the accused and evaluate the legal significance of how the accused reacted. The Court further suggested that none of the cases discussed turned on the presence or absence of a single controlling factor but each reflected careful scrutiny of all surrounding circumstances. The petitioner suggests that the rules of voluntariness for confession apply equally the same to the voluntariness in consenting to the taking of a blood sample.

A thorough reading of the testimony and evidence at the hearing on the motion to suppress would reveal that the facts would not support the finding by the trial court that the petitioner "truly voluntarily" gave his consent to the taking of his blood. The alleged consent was requested by and given to a medical doctor and nurse in the emergency room where the petitioner was being treated for serious injuries resulting from the accident. There was virtually no evidence that the alleged consent given by the petitioner was given with full knowledge that the results of the test may be used for or against him. Nor was there any evidence that the petitioner was aware that the blood was to be used to determine alcoholic content for purposes other than to aid in treating him for his injuries.

In order for the Court to reach its conclusion, it had to totally disregard the testimony of all of the petitioner's witnesses, as to his condition to freely give his consent to the taking of his blood for the purpose intended.

The testimony of his sister who was in the emergency room when the petitioner was brought in and who was present when attempts were made to get him to sign the consent form is of particular note. She specifically and verbally told the nurse, who allegedly obtained the consent that the petitioner was in no condition to sign anything and if he did he would not know what he was signing. She then refused permission to the taking of the blood on behalf of her brother.

Nurse Illausky herself testified that it was her responsibility to get the form signed.

The medical records introduced at trial clearly support the petitioner's contention that he could not have "truly and voluntarily" given his consent to the taking of a sample of his blood. These records reveal that at the time the blood was taken the petitioner was suffering from the full effects of a serious automobile accident, a severe laceration over his lip requiring numerous stitches to close in three layers, a fractured nose, dislocated hip and internal injuries. He remained in the hospital for 24 days, 12 of which were in the intensive care unit as a result of complications which set in. His left leg was also placed in traction to correct the dislocated hip.

It is clear from the factual situation recited above that the petitioner could not have "truly voluntarily" given his consent to the taking of his blood as required by the cases.

B

Regardless Of The Question Of Consent The Blood Test Result Was Inadmissible As A Warrantless Search Without An Arrest Or Probable Cause To Suspect The Petitioner Had Committed A Crime

The trial court ruled that the motion to suppress turned on a question of consent and made a finding that the defendant did give

his consent, truly voluntarily. The motion was then overruled and the blood test results admitted. The petitioner contends that even if the trial court found that the consent was given truly voluntarily, the fact was not sufficient to justify the admission of the evidence because of constitutional safeguards:

a. There was no evidence that the petitioner was advised or knew that the blood was to be used for any purpose other than determining alcohol content.

b. The petitioner was not under arrest or even suspected of being under the influence of liquor at the time the blood was taken.

c. The petitioner at the time was being treated for his serious injuries.

d. The request was made by a doctor and nurse in the emergency room of the hospital.

e. The petitioner was arrested two and a half months after the accident which was also more than one month after the test results were revealed.

f. The uncontradicted evidence that the test results were the primary basis for the issuance of the arrest warrant.

7. *The Decision Below Failed To Extend Fifth Amendment Protections Against Self Incrimination To A Person, Not Under Arrest Or Suspected Of Being Under The Influence Of Alcohol Whose Blood Is Given To A Doctor In A Hospital Without Knowledge Or Warning That The Same Might Be Used Against Him To Formulate The Basis For Criminal Charges.*

A

The Court Misapplied The Ruling In *Schmerber v. California* in Holding That The Fifth Amendment Privilege Was Not Available To An Accused Where There Was No Evidence Of Compulsion

The Court stated that he relied on the decision in *Schmerber v. California*, 384 U.S. 757 (1966), in which this Court upheld the admission into evidence over the objection of the petitioner a report of the chemical analysis of her blood, holding that the privilege against self-incrimination is not available to an accused in a case where there is not even a shadow of compulsion to testify against himself or otherwise provide the state with evidence of a testimonial or communicable nature.

It is of further importance to note that the consent form, State's Exhibit "O" (see appendix C) did not inform the petitioner the purpose of the blood sampling being taken, other than to determine the amount of alcoholic content. Furthermore, the evidence is undisputed that no one ever advised the petitioner of his right to remain silent, refuse to consent to the blood sampling, or that the results might be used in evidence against him in future criminal proceedings.

The unique difference in this case and *Schmerber* is that at the time the blood sample was taken, *Schmerber*, the accused, had the smell of alcohol on her breath, exhibited other symptoms of

drunkenness at the scene of the accident and had been placed under arrest prior to the time the blood was extracted. None of these circumstances exists here. In fact, the overwhelming cases in which the introduction of blood test evidence has been upheld involve a suspicion that alcohol was a factor and/or an arrest had preceded the taking of the blood sample.

To apply the rules of *Schmerber* there must be ample justification by the police officers to conclude that the driver was under the influence of alcohol.

Moreover, the Court in accepting the consent form as bolstering his finding of free and voluntary consent failed to consider the fact that the signature was obtained some time within 45 minutes after the blood was drawn, at a time when the petitioner was still suffering from the effects of the accident, was influenced by the demoral medication which was injected into his blood stream shortly after he was admitted to the hospital, and the fact that Dr. Hicks had just concluded suturing the severe laceration of his upper lip and setting his fractured nose.

In the absence of an arrest, or the suspicion of alcohol involvement, the desired result found in the blood test cannot justify the prosecution of the petitioner in violation of constitutional safeguards.

This Court in *Schmerber* very carefully delineated the basis upon which the police are justified in requiring a petitioner to submit to a blood test and what means and procedures can be employed in taking the blood without violating the Fourth Amendment standards.

The Court stated that:

- (1) There was plainly probable cause for the officer to arrest *Schmerber* and charge her with driving an automobile while under the influence of intoxicating liquor.

In this case, the petitioner was not under arrest and the Court found that there was no probable cause to suspect the petitioner was under the influence of alcohol when the blood sample was taken.

- (2) The officer testified as to his observations of *Schmerber*, such as the smell of liquor on her breath, bloodshot, watering and sort of glossy appearance, at the accident and at the hospital two hours later. No such facts exist in this case. In fact, the officer testified that he did not smell alcohol on the petitioner's breath at any time, and that he had not placed him under arrest or advised him of his rights.
- (3) *Schmerber* was placed under arrest and advised of her rights prior to the taking of her blood sample. *Singleton* was not under arrest or advised of any rights when the blood sample was taken. The arrest did not take place until two and one-half months later, approximately one month after the test results had been returned to the Bristol Police Department.

The *Schmerber* decision at page 771 upholding the search without a warrant, clearly and carefully limited the validity of the search to "these special facts." The petitioner argues that in the absence of virtually all of the underlying facts, as set forth above in *Schmerber* which convinced the Court to reach the conclusion it did, the search in this case is clearly a violation of the petitioner's Fourth, Fifth and Fourteenth Amendment rights.

B

The Fifth Amendment To The U.S. Constitution Does Not Limit The Privilege Against Self Incrimination To Those Accused Or Suspected Of Having Committed A Crime, And Should Extend To Anyone Whose Actions Or Statements Given Voluntarily Or Otherwise Becomes The Primary Basis For The Issuance Of An Arrest Warrant

The Fifth Amendment prohibition against compelling a person in a criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law, is well established principle of constitutional law, supported by the judicial decisions of this Court.

In *Mapp v. Ohio*, 367 U.S. 643, 655 (1961), the basic premise was established that evidence obtained by an unreasonable search and seizure is inadmissible in a criminal case. The fruits of an unlawful search must, therefore, be suppressed.

The Court below has ruled that under the circumstances in this case there appears to have been no requirement for a *Miranda*-type warning, *Miranda v. Arizona*, 384 U.S. 436 (1965), before the taking of the blood samples by the attending physician because it was not taken in the course of a custodial interrogation by the police or in a "coercive environment" citing federal and state cases in support of that conclusion.

It is agreed that the ruling in the landmark *Miranda* decision involved a custodial interrogation in a coercive environment. However, the Fifth Amendment in its simplest form does not limit the right against self-incrimination to a person who is accused of a crime, under arrest, in custody, or in a custodial or coercive environment.

It would be seemingly ludicrous to take the position that a person not suspected of having committed a crime, not in custody and with no reason to believe that the evidence obtained from him would be used against him in yet to be determined criminal proceedings would not be entitled to the privilege while a person having already been arrested upon probable cause that he was under the influence would be so entitled. In short, the results as applied to this case would be that a person obviously drunk or suspected of being under the influence at the time of the accident and already under arrest on criminal charges, would be entitled

to the privilege, but a *Singleton* not even suspected of being under the influence and not under arrest would not be.

It is the petitioner's contention that any evidence obtained from him, whether voluntary or involuntary, while he was confined to a stretcher in the emergency room of the Bristol Hospital, being treated for his severe injuries, should not have been used against him as the primary basis for the issuance of an arrest warrant against him and that he was entitled to the Fifth Amendment privilege against self-incrimination. Support for this contention is found in the language of this Court in the *Schmerber* decision. *Schmerber v. California*, 384 U.S. 757 (1966) at page 769.

"The interest in human dignity and privacy which the fourth amendment protects forbids any such intrusion on the mere chance that desired evidence might be obtained. In the absence of the clear indication that in fact such evidence will be found, these fundamental human interests require law officers to suffer the risk that such evidence may disappear unless there is an immediate search."

This Court has also made clear that the overriding function of the Fourth Amendment is to protect personal privacy and dignity against unwarranted intrusion by the State. *Schmerber supra* at page 767. *Wolf v. Colorado*, 338 U.S. 25.

Finally it is argued that in view of the physical and mental condition of the petitioner at the time the blood sample was taken, and the location and circumstances of the taking of the blood such a situation was tantamount to a coercive environment. He was certainly not in a position to leave the emergency room, nor was he in a position to tell the doctor, nurse or police officer to go away.

His right to make a choice was certainly greatly impaired if not completely unavailable to him. "Voluntarily" presupposes choice, and one makes no choice when one does not know he has

a choice. Voluntariness means proceeding from the will, unconstrained by interference, uncompelled by another's influence. *Ginsberg v. New York*, 390 U.S. 629 (1968).

In *Ray v. U.S.*, 84 F. 2d 654, 656, it was held that voluntary consent to search and seizure cannot be deemed voluntarily unless it clearly appears that the consent was freely and intelligently given.

There was no free choice here and the petitioner urges this Court to hear his appeal.

Conclusion

The Fourth Amendment right to be secure in their persons, could be of no greater importance than when a person is severely injured, and is subjecting himself to medical personnel in a public hospital for treatment. Particularly when that person has not been arrested or advised that he is suspected of having committed a crime. Citizens of this nation have a right to be secure in knowing that if they are taken to a hospital for treatment of injuries sustained in a serious accident, they can rely on and cooperate with hospital personnel in their request for blood in the course of medical treatment, without fear that the blood they give might become an instrument by which the State will obtain evidence to prosecute the unsuspecting victim for violations of undetermined criminal charges.

Accordingly, the petitioner urges this Court to rule that the use of the results of the blood sample in this case to prosecute the petitioner was in violation of the petitioner's constitutional rights under the Fourth, Fifth and Fourteenth Amendments to the U.S. Constitution.

For the above reasons, a writ of certiorari should issue in this case.

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**Appendix A. Memorandum Decision Supreme Court
State of Connecticut, Dated December 27, 1977
(House, J.)**

*State of Connecticut v. Hubert J. Singleton
House, c. J., Loiselle, Bogdanski, Longo and Speziale, Ja.*

Convicted of misconduct with a motor vehicle (53a-57) after a fatal accident involving the automobile he was driving, the defendant appealed, claiming that evidence concerning a sample of his blood, taken after the accident at a hospital and then analyzed to determine its alcohol content, should have been suppressed. As the trial court determined, however, in not improperly denying the motion to suppress, the defendant had willingly consented to the taking of his blood, and under the circumstances of that taking a *Miranda*-type warning appeared not to have been required before he did so. More, notwithstanding his further claim with respect to the blood sample, the procedural steps for the taking and testing of blood prescribed in the drunk driving statute (14-227a) are not applicable to, as here, a charged violation of 53a-57.

There was ample evidence— among it the defendant's actions shortly before the collision, the location of the accident on the highway, the speedometer reading on his car after the accident, and the results of the test on his blood—on which the jury could have concluded that the death was caused either by the defendant's criminal negligence or by his intoxication in the operation of his motor vehicle.

Argued October 12—decision released December 27, 1977

Information charging the defendant with the crime of misconduct with a motor vehicle, brought to the Superior Court in Hartford County and tried to the jury before *Thomas J. O'Sullivan, J.*

Appendix A, Memorandum Decision Supreme Court State of Connecticut, Dated December 27, 1977 (House, J.)

verdict and judgment of guilty and appeal by the defendant. *No error.*

The appellant filed a motion for reargument which was denied.

Herbert R. Scott, with whom, of the Massachusetts bar, was *Susan Holmes*, for the appellant (defendant).

George D. Stoughton, state's attorney, for the appellee (state).

House, C. J. On a trial to a jury, the defendant was found guilty of misconduct with a motor vehicle in violation of 53a-57 of the General Statutes in that he "with criminal negligence in the operation of a motor vehicle, caused the death of another person." From the judgment rendered on the verdict, he has taken the present appeal.

We are handicapped in reviewing the defendant's claims of error by his failure to comply with requirements of 631A of the Practice Book that, with respect to claimed errors in evidential rulings of the court, the brief contain the questions objected to, the basis of the objection, if any, the answer, if any, the ruling and the exception with appropriate references to the page or pages of the transcript. See *State v. Roberson*, 173 Conn. 97, 101, 376 A.2d 1089. Since the transcript in this case exceeds 1000 pages, the failure of the defendant to comply with the provisions of 631A of the Practice Book with respect to page references to the transcript places an intolerable burden on the court. The defendant, however, has fully briefed both his claim of error in the court's denial of his motion to suppress evidence concerning the testing of a sample of the defendant's blood and his claim that the court erred in refusing to set aside the verdict. Those are the principal claims of error which the defendant has briefed and decision as to them is decisive of the merits of the appeal.

Appendix A, Memorandum Decision Supreme Court State of Connecticut, Dated December 27, 1977 (House, J.)

The case arose out of the collision of two automobiles on a highway in Bristol at about 9 p.m. on September 23, 1973. One of the vehicles was operated by the defendant and the other by Renauld LaMare who died as a result of the collision. The defendant was taken from the scene of the accident to the Bristol Hospital where a sample of his blood was taken and analyzed to determine the content of alcohol in his system. The defendant moved to suppress all evidence concerning the taking of the blood sample and the results of tests and he claims that the court erred in denying his motion.

In the absence of a finding, we have examined the transcript to determine whether the evidence supports the ruling of the court. There was evidence in the statement of facts in the state's brief which was not challenged by the defendant from which the court could find that at the time the blood sample was taken by the attending physician at the hospital the defendant was not under arrest or in police custody (and indeed was not arrested until December 7, 1973), that he was calm, alert and cooperative, that he was told that the blood was being taken in order to determine the content of alcohol in his system, and that upon being asked whether he was willing to give a specimen of his blood for examination he willingly consented to the taking of the sample by the doctor. After hearing all the evidence, the court found as a question of fact that the defendant "did give his consent, truly voluntarily." The question of consent is one of fact to be decided by the trial court upon the evidence together with the reasonable inferences to be drawn from it. *State v. Hanna*, 150 Conn. 457, 471, 191 A.2d 124. Voluntariness is to be determined from the totality of the surrounding circumstances. *Schneckloth v. Bustamonte*, 412 U.S. 218, S. Ct. 2041, 36 L. Ed. 2d 854.

Under the circumstances, there appears to have been no require-

Appendix A, Memorandum Decision Supreme Court State of Connecticut, Dated December 27, 1977 (House, J.)

ment for a *Miranda*-type warning (*Miranda v. Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 16 L. Ed. 2d 694) before the defendant consented to the taking of the blood sample by the attending physician. It was not taken in the course of a custodial interrogation by the police or in a "coercive environment." See *Oregon v. Mathiason*, 429 U.S. 492, 97 S. Ct. 711, 50 L. Ed. 2d 714; *State v. Bennett*, 171 Conn. 47, 53, 368, A.2d 184; *State v. Schaffer*, 168 Conn. 309, 314, 362 A.2d 893; *State v. Szabo*, 166 Conn. 289, 292, 348 A.2d 588. Nor do we find merit in the defendant's contention that evidence as to the blood sample should have been excluded because the procedural steps for the taking and testing of the sample as set out in 14-227a (b) of the General Statutes were not followed. By its express terms, the procedural requirements of that section apply to any criminal prosecution for a violation of 14-227a (a)—the offense of operating a motor vehicle while under the influence of intoxicating liquor or drugs or both. The legislature has not made it applicable to the offense with which the defendant was charged—53a-57, "Misconduct with a motor vehicle."

As the brief of the defendant candidly states. "This case therefore turns on the question of consent and whether the consent in this case was voluntary." The court expressly found as a question of fact that the defendant "did give his consent, truly voluntarily," and the evidence amply supports this finding. There was no error in the decision of the court overruling the defendant's motion to suppress evidence concerning the sample of the defendant's blood.

Nor do we find any error in the court's denial of the defendant's motion to set aside the verdict. It is unnecessary to summarize the evidence in any great detail. There was evidence from which the jury could find that the defendant was returning from a club outing where he had had five or six drinks of Scotch and water;

Appendix A, Memorandum Decision Supreme Court State of Connecticut, Dated December 27, 1977 (House, J.)

that a short time before the collision he had driven his car into a curbing knocking off one of his hubcaps and while it was being replaced by a gas station attendant was observed to be weaving back and forth; that, thereafter, while driving in a southerly direction on a four-lane highway on which the lanes were marked he collided in the northbound lane at a point ten and one-half feet east of the center line with a car driven by Renauld LaMarre causing LaMarre's death; that the impact of the collision pushed the power brake assembly of the defendant's car against the dashboard, fixing the instruments at their approximate position as of the time of impact, and the speedometer needle on the defendant's car was thus fixed a little over 100 miles per hour; and, further, that a blood test taken at the hospital to which the defendant was removed showed alcohol present in his blood in the amount of .18 percent by weight. There was also evidence that one may be under the influence of intoxicating liquor with less than .10 percent alcohol by weight and the higher the percentage is the greater degree of intoxication.

It is to be noted that, following the language of the statute, the information was in the alternative—in that "with criminal negligence in the operation of a motor vehicle or in consequence of his intoxication while operating a motor vehicle" the defendant caused the death of another. The statute (53a-3 (14) provides that "a person acts with 'criminal negligence' with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation." The general verdict returned by the jury, of course, does not disclose whether

*Appendix A, Memorandum Decision Supreme Court State of
Connecticut, Dated December 27, 1977 (House, J.)*

the jury concluded that the death of LaMarre was due to the criminal negligence of the defendant or was a consequence of the defendant's intoxication while operating his motor vehicle. In either circumstance, there was ample evidence to support the verdict.

There is no error.

In this opinion the other judges concurred.

**Appendix B, Ruling of Court Re: Motion to Suppress
from Transcript (O'Sullivan, J.)**

THE COURT: Gentlemen, the issue was presented to me yesterday, and the way I framed the issue, had to do solely with the problem of consent. In my opinion, we're dealing with the cases in the State of Connecticut, on the issue of consent. I grant you, Mr. Scott, that the consent has to be truly voluntary. I don't think that the officer presented any evidence whatsoever which allowed the issue of probable cause to get into the case. In my opinion, he didn't have any probable cause to suspect that there was alcohol in the case, which would give him the right to take the blood without consent. I think the issue is consent. It's a question of fact for me as to whether I'll allow the evidence presented the other way. It's a question of fact for me to decide. I think that the question had to do with the verbal consent, because apparently from what the nurse testified, that document, if it was signed, was much—somewhat later, after Dr. Mirabelli had taken the blood. He did take the blood, and then he went on his way, apparently, and then she got the document, as she said, to be signed.

I think that the issue has to do with whether the verbal consent was voluntary. In my opinion it was, and I'm going to so rule. I bolster the decision by the fact that apparently Mr. Singleton did sign that consent form at a later time. I note from the hospital record that samples of his signature are contained in it, I think in two or three other places, and comparing those samples with the signature on the consent form, in my opinion, he did sign. But that of course was sometime later, and has nothing to do with whether he gave his consent voluntarily at the time Dr. Mirabelli took the sample. So, I'm going to deny the motion to suppress the evidence, and you may have an exception on that, Mr. Scott.

MR. SCOTT: May I have exceptions, your Honor, and may the record specifically reflect—well, it will so reflect the bases upon which my exceptions are being made.

THE COURT: Oh, yes.

Appendix C, Consent Form, State Exhibit O

BRISTOL HOSPITAL

CONSENT TO DRAW BLOOD FOR THE PURPOSE
OF BLOOD ALCOHOL DETERMINATION

I, James H. Singleton, the undersigned,
hereby consent to the taking of a blood sample from me for the purpose of determining
alcoholic content, pursuant to the appropriate provisions of the vehicle and traffic laws
of the State of Connecticut. I am voluntarily submitting to this test.

I understand that the hospital, its agents and employees, will incur no responsibility
arising from the taking of the blood sample.

The agent of the hospital taking such a blood sample is authorized to deliver such
sample to Police Officer, Det. Ronald M. Boney, Badge # 37

Date September 23, 1973 Signed X
Address 116 Middle Street
Bristol, Connecticut

Parent or Legal Guardian _____
Address _____

Witness E. H. [Signature]
Witness [Signature]

Appendix D, Sec. 53a-57. General Statutes
State of Connecticut

Sec. 14-227. Operation while under influence of liquor, drugs or both. Chemical tests. Evidence. (a) No person shall operate a motor vehicle upon a public highway of this state or upon any road of a district organized under the provisions of chapter 105, a purpose of which is the construction and maintenance of roads and sidewalks, or upon any private road on which a speed limit has been established in accordance with the provisions of subsection (b) of section 14-219, or in any parking area, as defined in section 14-219a, for ten or more cars or upon any school property while under the influence of intoxicating liquor or any drug, or both.

(b) In any criminal prosecution for a violation of subsection (a) of this section, evidence respecting the amount of alcohol in the defendant's blood at the time of the alleged offense, as shown by a chemical analysis of the defendant's breath or blood, shall be admissible and competent provided: (1) The defendant consented to the taking of the test upon which such analysis is made; (2) a true copy of the report of the test result was mailed to the defendant within twenty-four hours after such result was known; (3) the test was performed according to methods and with equipment approved by the state department of health and was performed by a person certified for such purpose by said department. If a blood test is taken, it shall be on a blood sample taken by a person licensed to practice medicine and surgery in this state or a qualified laboratory technician or a registered nurse; (4) the device used for such test was checked for accuracy by the state department of health within thirty days before the test and by the operator thereof immediately after the test; (5) the defendant was afforded an opportunity to have any additional chemical test performed and the officer who arrested or charged the defendant immediately informed him of his right, afforded him a reasonable

*Appendix D, Sec. 53a-57. General Statutes
State of Connecticut*

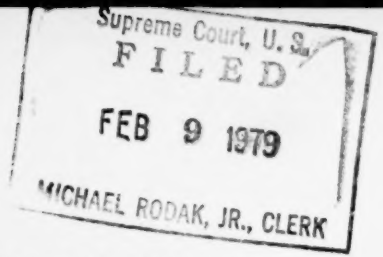
opportunity to exercise the same and made a notation to that effect upon the records of the police department; and (6) additional competent evidence is presented bearing on the question of whether or not the defendant was under the influence of intoxicating liquor.

**Appendix E, Sec. 14-227a. General Statutes
State of Connecticut**

Sec. 53a-57. Misconduct with a motor vehicle: Class D felony. (a) A person is guilty of misconduct with a motor vehicle when, with criminal negligence in the operation of a motor vehicle or in consequence of his intoxication while operating a motor vehicle, he causes the death of another person.

(b) Misconduct with a motor vehicle is a Class D felony.

(1969, P. 828, S. 58.)



**In The
Supreme Court Of The United States**

OCTOBER TERM, 1978

No. 78-1171

HUBERT SINGLETON, Petitioner

v.

STATE OF CONNECTICUT, Respondent

**BRIEF IN OPPOSITION TO
PETITION FOR CERTIORARI**

RESPONDENT
State of Connecticut

GEORGE D. STOUGHTON,
State's Attorney

**95 Washington Street
Hartford, Connecticut**

STATEMENT OF THE CASE

The Opinion of the Supreme Court of Connecticut, reprinted in the petitioner's Appendix, concisely summarizes the underlying facts as follows:

"The case arose out of the collision of two automobiles on a highway in Bristol at about 9 p.m. on September 23, 1973. One of the vehicles was operated by the defendant and the other by Renauld LaMarre who died as a result of the collision. The defendant was taken from the scene of the accident to the Bristol Hospital where a sample of his blood was taken and analyzed to determine the content of alcohol in his system....

There was evidence from which the jury could find that the defendant was returning from a club outing where he had had five or six drinks of scotch and water; that a short time before the collision he had driven his car into a curbing knocking off one of his hubcaps and while it was being replaced by a gas station attendant was observed to be weaving back and forth; that, thereafter, while driving in a southerly direction on a four-lane highway on which the lanes were marked he collided in the north-bound lane at a point ten and one-half feet east of the center line with a car driven by Renauld LaMarre causing LaMarre's death; that the impact of the

collision pushed the power brake assembly of the defendant's car against the dashboard, fixing the instruments at their approximate position as of the time of impact, and the speedometer needle on the defendant's car was thus fixed at a little over 100 miles per hour; and, further, that a blood test taken at the hospital to which the defendant was removed showed alcohol present in his blood in the amount of .18 percent by weight. There was also evidence that one may be under the influence of intoxicating liquor with less than .10 percent alcohol by weight and the higher the percentage is the greater is the degree of intoxication." *State v. Singleton*, 174 Conn. 112, 384 A.2d 334.

The petitioner, having elected a jury trial, was convicted of Misconduct with a Motor Vehicle, a felony with a maximum penalty of five years. Connecticut General Statutes, Sec. 53a-57. He has been sentenced to a term of one year, suspended after six months, and probation for three years; the execution of that sentence has been deferred pending finality of the present appeal process.

ARGUMENT

I

THE PETITION HAS NOT BEEN FILED IN COMPLIANCE WITH RULE 22.

The decision of the Connecticut Supreme Court which this petition seeks to review was released December 27, 1977. A motion to reargue in that court was denied on January 25, 1978. Subsequently, on motion by the petitioner, the Connecticut Supreme Court, on February 15, 1978, granted an indefinite stay of the petitioner's sentence to allow filing of the present petition. No such petition having been filed, the respondent, on September 8, 1978, moved the Connecticut Supreme Court to terminate the stay of execution. That Court, on October 4, 1978, ordered that the stay be terminated unless the petitioner applied for a writ of certiorari to this Court "on or before October 16, 1978." Thereafter, on October 16, 1978, the respondent was served with a copy of the present petition.

Rule 22(1) of the Rules of the United States Supreme Court allows ninety days from judgment for the filing of a petition for writ of certiorari, with a potential period of extension not exceeding sixty days. In the circumstances of the present case, taking the denial of the motion to reargue as the final judgment of the Connecticut Supreme Court, the time for filing the petition expired on or about April 25, 1978. Assuming a maximum extension under Rule 22(1), which apparently was neither sought nor granted, the time for filing would have

expired on or about June 24, 1978. Therefore the pending petition, dated October 10, 1978, should be denied.

II

THE PETITION FAILS TO RAISE A A FEDERAL QUESTION OF SUBSTANCE.

The issues raised and argued in the present petition do not address substantial questions of federal or constitutional law. See Rule 19(1)(a). The governing principles of law have already been enunciated by this Court in *Schmerber v. California*, 384 U.S. 757, 16 L.Ed.2d 908, 86 S.Ct. 1826 (1966); *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973); and *Cupp v. Murphy*, 412 U.S. 291, 296, 93 S.Ct. 2000, 36 L.Ed.2d 900 (1973). The unanimous opinion of the Connecticut Supreme Court is not in conflict with those decisions. The present petition should therefore be denied.

CONCLUSION

For the reasons set forth above, the respondent respectfully requests that the petition be denied.

Respondent, State of Connecticut

By: GEORGE D. STOUGHTON
State's Attorney